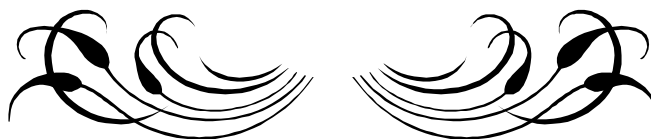


Chapter 9: Ethical and Legal Issues

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STATEMENT ON PROFESSIONAL ETHICS- American Library Association Code of Ethics

As members of the American Library Association, we recognize the importance of codifying and making known to the profession and to the general public the ethical principles that guide the work of librarians, other professionals providing information services, library trustees and library staffs.

Ethical dilemmas occur when values are in conflict. The American Library Association Code of Ethics states the values to which we are committed, and embodies the ethical responsibilities of the profession in this changing information environment.

We significantly influence or control the selection, organization, preservation, and dissemination of information. In a political system grounded in an informed citizenry, we are members of a profession explicitly committed to intellectual freedom and the freedom of access to information. We have a special obligation to ensure the free flow of information and ideas to present and future generations.

The principles of this Code are expressed in broad statements to guide ethical decision making. These statements provide a framework; they cannot and do not dictate conduct to cover particular situations.

I. We provide the highest level of service to all library users through appropriate and usefully organized resources; equitable service policies; equitable access; and accurate, unbiased, and courteous responses to all requests.

II. We uphold the principles of intellectual freedom and resist all efforts to censor library resources.

III. We protect each library user's right to privacy and confidentiality with respect to information sought or received and resources consulted, borrowed, acquired or transmitted.

IV. We recognize and respect intellectual property rights.

V. We treat co-workers and other colleagues with respect, fairness and good faith, and advocate conditions of employment that safeguard the rights and welfare of all employees of our institutions.

VI. We do not advance private interests at the expense of library users, colleagues, or our employing institutions.

VII. We distinguish between our personal convictions and professional duties and do not allow our personal beliefs to interfere with fair representation of the aims of our institutions or the provision of access to their information resources.

VIII. We strive for excellence in the profession by maintaining and enhancing our own knowledge and skills, by encouraging the Professional development of co-workers, and by fostering the aspirations of potential members of the profession.

*Adopted by the ALA Council
June 28, 1995*

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INTRODUCTION

Professional and legal issues are complex. School library media specialists must be fully informed about these issues and assume a leadership role in promoting compliance with the legal documents and policy statements governing these issues.

This chapter contains a selection of laws, interpretations, and professional position statements which should be useful in developing the board approved policies and library media center procedures listed in the *Missouri School Improvement Program Standards and Indicators* document, section 10.1A. Additional documents may be found on-line.

INTELLECTUAL FREEDOM ISSUES

Intellectual freedom is freedom of the mind. It is an essential part of government by the people. Intellectual freedom is the right of any person to hold any beliefs whatsoever on any subject, and to express those beliefs in whatever manner the person considers appropriate. The First Amendment to the U.S. Constitution establishes this freedom:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peacefully to assemble, and to petition the Government for a redress of grievances.”

The following intellectual freedom documents should be useful in developing board-approved policies and school library media center procedures:

- The Students’ Right to Read (NCTE)
- Freedom to Read (ALA)
- Library Bill of Rights (ALA)
- Statement on Labeling (ALA)
- Freedom to View (ALA)

An open letter to the citizens of our country from the National Council of Teachers of English. (Reprinted by permission.)

Where suspicion fills the air and holds scholars in line for fear of their jobs, there can be no exercise of the free intellect. A problem can no longer be pursued with impunity to its edges. Fear stalks the classroom. The teacher is no longer a stimulant to adventurous thinking; she becomes instead a pipe line for safe and sound information. A deadening dogma takes the place of free inquiry. Instruction tends to become sterile; pursuit of knowledge is discouraged; discussion often leaves off where it should begin.

**Justice William O. Douglas
United States Supreme Court:
Adler v. Board of Education, 1952.**

THE STUDENTS' RIGHT TO READ

The right to read, like all rights guaranteed or implied within our constitutional tradition, can be used wisely or foolishly. In many ways, education is an effort to improve the quality of choices open to all students. But to deny the freedom of choice in fear that it may be unwisely used is to destroy the freedom itself. For the same reason, we respect the right of individuals to be selective in their own reading. But for the same reason, we oppose efforts of individuals or groups to limit the freedom of choice of others or to impose their own standards or tastes upon the community at large.

The right of any individual not just to read but to read whatever he or she wants to read is basic to a democratic society. This right is based on an assumption that the educated possess judgment and understanding and can be trusted with the determination of their own actions. In effect, the reader is freed from the bonds of chance. The reader is not limited by birth, geographic location, or time, since reading allows meeting people, debating philosophies, and experiencing events far beyond the narrow confines of an individual's own existence.

In selecting books for reading by young people, English teachers consider the contribution which each work may make to the education of the reader, its aesthetic value, its honesty, its readability for a particular group of students, and its appeal to adolescents. English teachers, however, may use different works for different purposes. The criteria for choosing a work to be read by an entire class are somewhat different from the criteria for choosing works to be read by small groups. For example, a teacher might select John Knowles' *A Separate Peace* for reading by an entire class, partly because the book has received wide critical recognition, partly because it is relatively short and will keep the attention of many slow readers, and partly because it has proved popular with many students of widely differing abilities. The same teacher, faced with the responsibility of choosing or recommending books for several small groups of students, might select or recommend books as different as Nathaniel Hawthorne's *A Scarlet Letter*, Jack Schaefer's *Shane*, Alexander Solzhenitsyn's *One Day in the Life of Ivan Denisovitch*, Pierre Boulle's *The Bridge Over the River Kwai*, Charles Dickens' *Great Expectations*, or Paul Zindel's *The Pigman*, depending upon the abilities and interests of the students in each group. And the criteria for suggesting books to individuals or for recommending something worth reading for a student who casually stops by after class are different from selecting material for a class or group. But the teacher selects, not censors, books. Selection implies that a teacher is free to choose this or that work, depending upon the purpose to be achieved and the student or class in question, but a book selected this year may be ignored next year, and the reverse. Censorship implies that certain works are not open to selection, this year or any year.

Wallace Stevens once wrote, "Literature is the better part of life. To this it seems inevitably necessary to add, provided life is the better part of literature." Students and parents have the right to demand that education today keep students in touch with the reality of the world outside the classroom. Much of classic literature asks questions as valid and significant today as when the literature first appeared, questions like "What is the nature of humanity?" "Why do people praise individuality and practice conformity?" "What do people need for a good life?" and "What is the nature of a good person?" But youth is the age of revolt. To pretend otherwise is to ignore a reality made clear to young people and adults alike on television and radio, in the newspapers and magazines. English teachers must be free to employ books, classic or contemporary, which do not lie to the young about the perilous but wondrous times we live in, books which talk of the fears, hopes, jobs, and frustrations people experience, books about people not only as they are but as they can be. English teachers forced through the pressures of censorship to use only safe or

antiseptic works are placed in the morally and intellectually untenable position of lying to their students about the nature and condition of mankind.

The teacher must exercise care to select or recommend works for class reading and group discussion. One of the most important responsibilities of the English teacher is developing rapport and respect among students. Respect for the uniqueness and potential of the individual, an important facet of the study of literature, should be emphasized in the English class. Literature classes should reflect the cultural contributions of many minority groups in the United States, just as they should acquaint students with contributions from the peoples of Asia, Africa, and Latin America.

THE FREEDOM TO READ STATEMENT

The freedom to read is essential to our democracy. It is continuously under attack. Private groups and public authorities in various parts of the country are working to remove books from sale, to censor textbooks, to label “controversial” books, to distribute lists of “objectionable” books or authors, and to purge libraries. These actions apparently rise from a view that our national tradition of free expression is no longer valid; that censorship and suppression are needed to avoid the subversion of politics and the corruption of morals. We, as citizens devoted to the use of books and as librarians and publishers responsible for disseminating them, wish to assert the public interest in the preservation of the freedom to read.

We are deeply concerned about these attempts at suppression. Most such attempts rest on a denial of the fundamental premise of democracy: that the ordinary citizen, by exercising his critical judgment, will accept the good and reject the bad. The censors, public and private, assume that they should determine what is good and what is bad for their fellow-citizens.

We trust Americans to recognize propaganda and to reject it. We do not believe they need the help of censors to assist them in this task. We do not believe they are prepared to sacrifice their heritage of free press in order to be “protected” against what others think may be bad for them. We believe they still favor free enterprise in ideas and expression.

We are aware, of course, that books are not alone in being subjected to efforts at suppression. We are aware that these efforts are related to a larger pattern of pressures being brought against education, the press, films, radio and television. The problem is not only one of actual censorship. The shadow of fear cast by these pressures leads, we suspect, to an even larger voluntary curtailment of expression by those who seek to avoid controversy.

Such pressure toward conformity is perhaps natural to a time of uneasy change and pervading fear. Especially when so many of our apprehensions are directed against an ideology, the expression of a dissident idea becomes a thing feared in itself, and we tend to move against it as against a hostile deed, with suppression.

And yet suppression is never more dangerous than in such a time of social tension. Freedom has given the United States the elasticity to endure strain. Freedom keeps open the path of novel and creative solutions and enables change to come by choice. Every silencing of a heresy, every enforcement of an orthodoxy, diminishes the toughness and resilience of our society and leaves it the less able to deal with stress.

Now as always in our history, books are among our greatest instruments of freedom. They are almost the only means for making generally available ideas or manners of expression that can initially command only a small audience. They are the natural medium for the new idea and the untried voice from which come the original contributions to social growth. They are essential to the

extended discussion which serious thought requires and to the accumulation of knowledge and ideas into organized collections.

We believe that free communication is essential to the preservation of a free society and a creative culture. We believe that these pressures towards conformity present the danger of limiting the range and variety of inquiry and expression on which our democracy and our culture depend. We believe that every American community must jealously guard the freedom to publish and to circulate, in order to preserve its own freedom to read. We believe that publishers and librarians have a profound responsibility to give validity to that freedom to read by making it possible for the readers to choose freely from a variety of offerings.

The freedom to read is guaranteed by the Constitution. Those with faith in free men will stand firm on these constitutional guarantees of essential right and will exercise the responsibilities that accompany these rights.

We therefore affirm these propositions:

1. It is in the public interest for publishers and librarians to make available the widest diversity of views and expressions, including those which are unorthodox or unpopular with the majority.

Creative thought is by definition new, and what is new is different. The bearer of every new thought is a rebel until his idea is refined and tested. Totalitarian systems attempt to maintain themselves in power by the ruthless suppression of any concept which challenges the established orthodoxy. The power of a democratic system to adapt to change is vastly strengthened by the freedom of its citizens to choose widely from among conflicting opinions offered freely to them. To stifle every nonconformist idea at birth would mark the end of the democratic process. Furthermore, only through the constant activity of weighing and selecting can the democratic mind attain the strength demanded by times like these. We need to know not only what we believe but why we believe it.

2. Publishers, librarians and booksellers do not need to endorse every idea or presentation contained in the books they make available. It would conflict with the public interest for them to establish their own political, moral, or aesthetic views as a standard for determining what books should be published or circulated.

Publishers and librarians serve the educational process by helping to make available knowledge and ideas required for the growth of the mind and the increase of learning. They do not foster education by imposing as mentors the patterns of their own thought. The people should have the freedom to read and consider a broader range of ideas than those that may be held by any single librarian or publisher or government or church. It is wrong that what one man can read should be confined to what another thinks proper.

3. It is contrary to the public interest for publishers or librarians to determine the acceptability of a book on a basis of the personal history or political affiliations of the author.

A book should be judged as a book. No art or literature can flourish if it is to be measured by the political views or private lives of its creators. No society of free men can flourish which draws up lists of writers to whom it will not listen, whatever they may have to say.

4. There is no place in our society for efforts to coerce the taste of others, to confine adults to the reading matter deemed suitable for adolescents, or to inhibit the efforts of writers to achieve artistic expression.

To some, much of modern literature is shocking. But is not much of life itself shocking? We cut off literature at the source if we prevent writers from dealing with the stuff of life. Parents and teachers have a responsibility to prepare the young to meet the diversity of experiences in life to

which they will be exposed, as they have a responsibility to help them learn to think critically for themselves. These are affirmative responsibilities, not to be discharged simply by preventing them from reading works for which they are not yet prepared. In these matters taste differs, and taste cannot be legislated; nor can machinery be devised which will suit the demands of one group without limiting the freedom of others.

5. It is not in the public interest to force a reader to accept with any book the prejudgment of a label characterizing the book or author as subversive or dangerous.

The idea of labeling presupposes the existence of individuals or groups with wisdom to determine by authority what is good or bad for the citizen. It presupposes that each individual must be directed in making up his mind about the ideas he examines. But Americans do not need others to do their thinking for them.

6. It is the responsibility of publishers and librarians, as guardians of the people's freedom to read, to contest encroachments upon that freedom by individuals or groups seeking to impose their own standards or tastes upon the community at large.

It is inevitable in the give and take of the democratic process that the political, the moral, or the aesthetic concepts of an individual or group will occasionally collide with those of another individual or group. In a free society each individual is free to determine for himself what he wishes to read, and each group is free to determine what it will recommend to its freely associated members. But no group has the right to take the law into its own hands and to impose its own concept of politics or morality upon other members of a democratic society. Freedom is no freedom if it is accorded only to the accepted and the inoffensive.

7. It is the responsibility of publishers and librarians to give full meaning to the freedom to read by providing books that enrich the quality and diversity of thought and expression. By the exercise of this affirmative responsibility, bookmen can demonstrate that the answer to a bad book is a good one; the answer to a bad idea is a good one.

The freedom to read is of little consequence when expended on the trivial; it is frustrated when the reader cannot obtain matter fit for his purpose. What is needed is not only the absence of restraint but the positive provision of opportunity for the people to read the best that has been thought and said. Books are the major channel by which the intellectual inheritance is handed down and the principle means of its testing and growth. The defense of their freedom and integrity, and the enlargement of their service to society requires of all bookmen the utmost of their faculties and deserves of all citizens the fullest of their support.

We state these propositions neither lightly nor as easy generalizations. We here stake out a lofty claim for the value of books. We do so because we believe that they are good, possessed of enormous variety and usefulness, worthy of cherishing and keeping free. We realize that the application of these propositions may mean the dissemination of ideas and manners of expression that are repugnant to many persons. We do not state these propositions in the comfortable belief that what people read is unimportant. We believe rather that what people read is deeply important, that ideas can be dangerous, but that the suppression of ideas is fatal to a democratic society. Freedom itself is a dangerous way of life, but it is ours.

A Joint Statement by:
American Library Association
Association of American Publishers

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LIBRARY BILL OF RIGHTS

The American Library Association affirms that all libraries are forums for information and ideas and that the following basic policies should guide their services.

1. Books and other library resources should be provided for the interest, information, and enlightenment of all people of the community the library serves. Materials should not be excluded because of the origin, background, or views of those contributing to their creation.
2. Libraries should provide materials and information presenting all points of view on current and historical issues. Materials should not be proscribed or removed because of partisan or doctrinal disapproval.
3. Libraries should challenge censorship in the fulfillment of their responsibility to provide information and enlightenment.
4. Libraries should cooperate with all persons and groups concerned with resisting abridgment of free expression and free access to ideas.
5. A person's right to use a library should not be denied or abridged because of origin, age, background, or views.
6. Libraries which make exhibit spaces and meeting rooms available to the public they serve should make such facilities available on an equitable basis, regardless of the beliefs or affiliations of individuals or groups requesting their use.

Adopted June 18, 1948. Amended February 2, 1961, June 27, 1967, and January 23, 1980, by the ALA Council.

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STATEMENT ON LABELING—AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS

Because labeling violates the spirit of the LIBRARY BILL OF RIGHTS, the American Library Association opposes the technique of labeling as a means of predisposing readers against library materials for the following reasons:

1. Labeling is an attempt to prejudice the reader, and as such it is a censor's tool.
2. Although some find it easy and even proper, according to their ethics, to establish criteria for judging publications as objectionable, injustice and ignorance rather than justice and enlightenment result from such practices, and the American Library Association must oppose the establishment of such criteria.
3. Libraries do not advocate the ideas found in their collections. The presence of a magazine or book in a library does not indicate an endorsement of its contents by the library.
4. No one person should take the responsibility of labeling publications. No sizable group of persons would be likely to agree either on the types of material which should be labeled or the sources of information which should be regarded with suspicion. As a practical consideration, a librarian who labels a book or magazine might be sued for libel.
5. If materials are labeled to pacify one group, there is no excuse for refusing to label any item in the library's collection. Because authoritarians tend to suppress ideas and attempt to coerce individuals to conform to specific ideology, the American Library Association opposes such efforts which aim at closing any path to knowledge.

Adopted July 13, 1951; Amended June 25, 1971, by the ALA Council

"Labeling," as it is referred to in the STATEMENT ON LABELING, is the practice of describing or designating certain library materials, by affixing a prejudicial label to them or segregating them by a prejudicial system, so as to predispose readers against the materials.

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FREEDOM TO VIEW

The following is the text of the revised version of the Freedom to View statement, endorsed by the ALA Council at its Midwinter Meeting, January 10, 1990.

The Freedom to View, along with the freedom to speak, to hear, and to read, is protected by the First Amendment to the Constitution of the United States. In a free society, there is no place for censorship of any medium of expression. Therefore these principles are affirmed:

1. To provide the broadest possible access to film, video, and other audiovisual materials because they are a means for the communication of ideas. Liberty of circulation is essential to insure the constitutional guarantee of freedom of expression.
2. To protect the confidentiality of all individuals and institutions using film, video, and other audiovisual materials.
3. To provide film, video, and other audio visual materials which represent a diversity of views and expression. Selection of a work does not constitute or imply agreement with or approval of the content.
4. To provide a diversity of viewpoints without the constraint of labeling or prejudging film, video and other audiovisual materials on the basis of the moral, religious, or political beliefs of the producer or filmmaker or on the basis of controversial content.
5. To contest vigorously, by all lawful means, every encroachment upon the public's freedom to view.

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TECHNOLOGY AND TELECOMMUNICATIONS ISSUES

Student access to technology plays an important role in providing a quality library and information program. To support technology integration, the library media specialist is “informed about the latest technology through journals, conferences, workshops and visits to model sites.” The library media specialist then works cooperatively with the district technology director to “provide students access to

electronic resources for research, development of multimedia presentations and other information needs.” Not only does the library media specialist facilitate the effective use of technology by teachers and students, but he/she also provides information about, and strict adherence to, copyright guidelines related to technology. (Kentucky 30)

“The Internet can provide students with new, exciting, and challenging resources. It opens doors to multicultural education, establishes real-world learning experiences, invites higher-order thinking skills, and can help to increase motivation and writing skills.” (Barron 4)

“School library media specialists and teachers have a professional responsibility to work together and help students develop the intellectual skills needed to discriminate among information sources, to identify information appropriate to their age and developmental levels, and to evaluate and use information to meet their educational goals.” (Minnesota1)

“Because the Internet is a fluid environment, the information which will be available to students is constantly changing; therefore, it is impossible to predict with certainty what information students might locate. Just as the purchase, availability, and use of media materials does not indicate endorsement of their contents by school officials, neither does making electronic information available to students imply endorsement of that content.” (Minnesota 1)

See sample documents in Appendix H, which represent national and state models. The samples may be used to formulate local board-approved policies and library media center procedures relating to technology and telecommunications.

CIRCULATION AND ACCESS ISSUES

The freedom of a person to express beliefs is largely meaningless if access to the expression is denied to others. Hence, the concept of true intellectual freedom includes, by its very nature, the right of unrestricted access to all public information and ideas. “First and foremost, the library media specialist is an educator who ensures that knowledge about, access to, and the use of information is instilled into the school community. A major focus of the academic expectation is the accessing and processing of information to expand existing knowledge and to develop new knowledge.” (Online II, p.48)

The following circulation and access documents should be useful in developing board-approved policies and school library media center procedures related to circulation and access:

- American Association of School Librarians Position Statement: Access to Resources and Services in the School Library Media Program
- Access to Electronic Information, Services, and Networks
- Access for Children and Young People to Videotapes and Other Non-print Formats

Access to Electronic Information Services, and Networks: An Interpretation of the LIBRARY BILL OF RIGHTS

INTRODUCTION

The world is in the midst of an electronic communications revolution. Based on its constitutional, ethical, and historical heritage, American librarianship is uniquely positioned to address the broad range of information issues being raised in this revolution. In particular, librarians address intellectual freedom from a strong ethical base and an abiding commitment to the preservation of the individual's rights.

Freedom of expression is an inalienable human right and the foundation for self-government. Freedom of expression encompasses the freedom of speech and corollary right to receive information. These rights extend to minors as well as adults. Libraries and librarians exist to facilitate the exercise of these rights by selecting, producing, providing access to, identifying, retrieving, organizing, providing instruction in the use of, and preserving recorded expression regardless of the format or technology.

The American Library Association expresses these basic principles of librarianship in its CODE OF ETHICS and in the LIBRARY BILL OF RIGHTS and its Interpretations. These serve to guide librarians and library governing bodies in addressing issues of intellectual freedom that arise when the library provides access to electronic information, services, and networks.

Issues arising from the still-developing technology of computer-mediated information generation, distribution, and retrieval need to be approached and regularly reviewed from a context of constitutional principles and ALA policies so that fundamental and traditional tenets of librarianship are not swept away.

Electronic information flows across boundaries and barriers despite attempts by individuals, governments, and private entities to channel or control it. Even so, many people, for reasons of technology, infrastructure, or socioeconomic status do not have access to electronic information.

In making decisions about how to offer access to electronic information, each library should consider its mission, goals, objectives, cooperative agreements, and the needs of the entire community it serves.

THE RIGHTS OF USERS

All library system and network policies, procedures or regulations relating to electronic resources and services should be scrutinized for potential violation of user rights.

User policies should be developed according to the policies and guidelines established by the American Library Association, including GUIDELINES FOR THE DEVELOPMENT AND IMPLEMENTATION OF POLICIES, REGULATIONS AND

PROCEDURES AFFECTING ACCESS TO LIBRARY MATERIALS, SERVICES AND FACILITIES.

Users should not be restricted or denied access for expressing or receiving constitutionally protected speech. Users' access should not be changed without due process, including, but not limited to, formal notice and a means of appeal.

Although electronic systems may include distinct property rights and security concerns, such elements may not be employed as a subterfuge to deny users' access to information. Users have the right to be free of unreasonable limitations or conditions set by libraries, librarians, system administrators, vendors, network service providers, or others. Contracts, agreements, and licenses entered into by libraries on behalf of their users should not violate this right. Users also have a right to information, training and assistance necessary to operate the hardware and software provided by the library.

Users have both the right of confidentiality and the right of privacy. The library should uphold these rights by policy, procedure, and practice. Users should be advised, however, that because security is technically difficult to achieve, electronic transactions and files could become public.

The rights of users who are minors shall in no way be abridged. (See: **FREE ACCESS TO LIBRARIES FOR MINORS: AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS**; **ACCESS TO RESOURCES AND SERVICES IN THE SCHOOL LIBRARY MEDIA PROGRAM**; and **ACCESS FOR CHILDREN AND YOUNG PEOPLE TO VIDEOTAPES AND OTHER NONPRINT FORMATS**.)

EQUITY OF ACCESS

Electronic information, services, and networks provided directly or indirectly by the library should be equally, readily and equitably accessible to all library users. American Library Association policies oppose the charging of user fees for the provision of information services by all libraries and information services that receive their major support from public funds (50.3; 53.1.14; 60.1; 61.1). It should be the goal of all libraries to develop policies concerning access to electronic resources in light of **ECONOMIC BARRIERS TO INFORMATION ACCESS: AN INTERPRETATION OF THE LIBRARY BILL OF RIGHTS** and **GUIDELINES FOR THE DEVELOPMENT AND IMPLEMENTATION OF POLICIES, REGULATIONS AND PROCEDURES AFFECTING ACCESS TO LIBRARY MATERIALS, SERVICES, AND FACILITIES**.

INFORMATION RESOURCES AND ACCESS

Providing connections to global information, services, and networks is not the same as selecting and purchasing material for a library collection. Determining the accuracy or authenticity of electronic information may present special problems. Some information accessed electronically may not meet a library's selection or collection development policy. It is, therefore, left to each user to determine what is appropriate. Parents and legal

guardians who are concerned about their children's use of electronic resources should provide guidance to their own children.

Libraries and librarians should not deny or limit access to information available via electronic resources because of its allegedly controversial content or because of the librarian's personal beliefs or fear of confrontation. Information retrieved or utilized electronically should be considered constitutionally protected unless determined otherwise by a court with appropriate jurisdiction.

Libraries, acting within their mission and objectives, must support access to information on all subjects that serve the needs or interests of each user, regardless of the user's age or the content of the material. Libraries have an obligation to provide access to government information available in electronic format. Libraries and librarians should not deny access to information solely on the grounds that it is perceived to lack value.

In order to prevent the loss of information, and to preserve the cultural record, libraries may need to expand their selection or collection development policies to ensure preservation, in appropriate formats, of information obtained electronically.

Electronic resources provide unprecedented opportunities to expand the scope of information available to users. Libraries and librarians should provide access to information presenting all points of view. The provision of access does not imply sponsorship or endorsement. These principles pertain to electronic resources no less than they do to the more traditional sources of information in libraries. (See: Diversity in Collection Development: an Interpretation of the Library Bill of Rights)

Adopted by the ALA Council, January 24, 1996.

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CONFIDENTIALITY AND PRIVACY ISSUES

School library media specialists recognize that children and youth have the same rights to privacy as adults.

The following documents should be useful in developing board-approved district policies and library media center procedures that ensure those rights. (See sample Confidentiality Policy in Appendix H)

- AASL Position Statement: Confidentiality of Library Records
- Right to Privacy (ALA)
- Missouri Confidentiality Law

■ Right to Privacy

■ Missouri Confidentiality Law

Missouri's confidentiality law was approved by The 83rd General Assembly of Missouri on June 19, 1986. Sections of this law, 182.815/182.817 RSMo, have implications for school libraries. Special attention should be given to Section 2 regarding library records.

MISSOURI CONFIDENTIALITY LAW

The following is taken from HB 1372:

570.200. 1. As used in this act, unless the context clearly indicates otherwise, the following terms shall mean:

- (1) “Library” any public library or any library of an educational, historical, or eleemosynary institution, organization, or society.
- (2) “Library card” a card or other device utilized by a library for purposes of identifying a person authorized to borrow library material, subject to all limitations and conditions imposed on such borrowing by the library issuing or honoring such card;
- (3) “Library material” any book, plate, picture, photograph, engraving, painting, sculpture, artifact, drawing, map, newspaper, microform, sound recording, audiovisual material, magnetic or other tape, electronic data processing record or other document, written or printed material, regardless of physical form or characteristic, which is a constituent element of a library’s collection or any part thereof, belonging to, on loan to, or otherwise in the custody of a library;
- (4) “Notice in writing” any notice deposited as certified or registered mail in the United States mail and addressed to the person at his address as it appears on the library card or to his last known address. The notice shall contain a statement that failure to return the library material within ten days of receipt of the notice may subject the user to criminal prosecution.
- (5) “Premises of a library” a building structure or other enclosure in which a library is located or in which the library keeps, displays and makes available for inspection, borrowing or return of library materials.

Section 1. As used in sections 1 and 2 of this act, the following terms shall mean:

- (1) “Library” any library established by the state or any political subdivision of the state, or combination thereof, by any community college district, or by any college or university, and any private library open to the public;
- (2) “Library material” any book, document, film, record, art work, or other library property which a patron may use, borrow, or request;
- (3) “Library record” any document, record, or other method of storing information retained, received or generated by a library that identifies a person or persons as having requested, used, or borrowed library material, and all other records identifying the names of library users. The term “library record” does not include non-identifying material that may be retained for the purpose of studying or evaluating the circulation of library material in general.

Section 2. Notwithstanding the provisions of any other law to the contrary, no library or employee or agent of a library shall be required to release or disclose a library record or portion of a library record to any person or persons except:

- (1) In response to a written request of the person identified in that record, according to procedures and forms giving written consent as determined by the library; or
- (2) In response to an order issued by a court of competent jurisdiction upon a finding that the disclosure of such record is necessary to protect the public safety or to prosecute a crime.

COPYRIGHT ISSUES

School library media specialists must be advocates for strict compliance with copyright law within their buildings. This implies a strong partnership with the administration and faculty to ensure that all staff members are aware of copyright legislation and court guidelines. The board of education has the legal responsibility to enforce copyright guidelines. It pays to be lawful. Several school districts have been found guilty of violations of the copyright law and ordered to pay damages.

The purpose of copyright protection is to promote and reward creative and intellectual works. Library media specialists have a vested interest in the promotion of copyright protection. As the champion of intellectual freedom in the school, the media specialist has the obligation to educate the school community to adhere to copyright law.

The following documents may be useful in developing board-approved policies and library media center procedures dealing with copyright issues.

- Suggested Components of a Copyright Policy
- Elements of Title 17, U.S. Code: The Copyright Law
- Copyright Basics: Guidelines and Restrictions for Use of Copyrighted Materials

■ Suggested Components of a Copyright Policy

The purpose of a copyright policy is to comply with the law and protect the school district and its employees. It is recommended that the following components be included in the school board-approved policy:

- rationale (purpose)
- philosophy of district
- responsibilities of administrators and other employees
- statement on liability

The purpose of guidelines or a handbook is to clarify the law, inform employees of their responsibilities, provide protection, and provide a reference source when employees have questions. Suggested components for the district's written guidelines include the following:

- explanation of "fair use" guidelines
- major elements of the copyright law
- licensing agreements
- information on infringements and liabilities
- guidelines and restrictions for use of copyrighted material
 - a) print
 - b) music
 - c) audiovisual
 - d) videotapes
 - e) off-air taping
 - f) computer software
 - g) database downloading
 - h) satellite broadcast usage
 - i) multimedia
 - j) internet
- copyright notice warning
- forms for district/personnel use
- court cases
- sources
- glossary

See sample Copyright Policies/Permission Letter in Appendix H

Elements of Title 17, United States Code: The Copyright Law

Definition

Copyright is a limited monopoly granted by federal law. It is the exclusive right that protects an author, composer, or programmer from having his or her work duplicated except by permission.

Purpose

The purpose of copyright is to encourage the development of new and original works and to stimulate their wide distribution by assuring that their creators will be fairly compensated for their contributions to society.

Length of Ownership

Copyright lasts for the life of the author plus fifty (50) years. Mere ownership of a book, manuscript, video, etc., **does not** give the possessor the copyright. That is only ownership of a **copy** of the work. Only the author or his designees can rightfully claim copyright.

Works Included

Works of authorship include, **but are not limited to**, the following categories:

- Computer programs
- Dramatic works, including any accompanying music
- Literary works
- Motion pictures and other audiovisual works
- Musical works, including any accompanying words
- Pantomimes and choreographic works
- Pictorial, graphic, and sculptural works
- Sound recordings

Date of Law and Congressional Guidelines

The current American copyright law is embodied in Title 17 of the United States Code, revisions becoming effective January 1, 1978. The Kastenmeyer guidelines were an attempt to explain the law more fully to laymen and are considered by most copyright experts as adequate guides in an honest attempt to comply with the copyright law. Those guidelines were written at the direction of Congressman Kastenmeyer but were not adopted formally, as time ran out on that Congressional session.

■ Copyright Basics: Guidelines and Restrictions for Use of Copyrighted Materials

Ö Photocopying Equipment

The following notice should be placed on all photocopying equipment, video recording equipment, and computers.

WARNING NOTICE CONCERNING COPYRIGHT RESTRICTIONS

The copyright law of the United States (Title 17, United States Code), governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specific conditions is that the photocopy or reproduction is not to be “used for any purpose other than private study, scholarship, or research.” If a user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of “fair use,” that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Ö Copyright Infringements and Liabilities

Innocent Violation

The Copyright Revision Act provides some relief to media specialists and educators who innocently infringe a copyright believing the use to be fair.

If there is a school district policy regarding copying and the media specialist or instructor is conforming to that policy, then the media specialist or teacher should be protected by the institution.

Willful Violation

If violation is willful, copyright infringement can result in an injunction against further violations, impoundment or wrongfully duplicated materials, actual damages suffered or “statutory” civil damages of not less than \$250.00 and no more than \$10,000.00 per violation, and assessment of attorney’s fees.

If the violation is extraordinary, the statutory damages can be increased to \$50,000.00.

For willful violations undertaken for financial gain, criminal penalties also can be levied. First offenders may be imprisoned for up to one year and fined up to \$25,000.00 in addition to all the civil penalties just enumerated.

Liability

In case of an infringement the media specialist, teacher, school principal, superintendent, and the school board can all be sued. The person who does the infringing is considered the prime offender.

Frivolous Lawsuits

Compliance with these guidelines does not ensure against the filing of suits regarding activities clearly within the guidelines. No one can be stopped from filing a suit, no matter how frivolous. However, compliance with the guidelines would be a very influential consideration in any court case, and chances of recovering damages would be minimal.

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